

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper No. ~~65~~ 21

Filed by: Trial Section Motions Panel  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed: April 10, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

**FAXED**

FUMIHIKO WATANABE, HIROSHIGE TSUZUKI  
AND MITSUAKI OHTANI  
Junior Party  
(U.S. Patent Application 09/120,383),

APR 10 2003

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

v.

PATRICK MICHAEL O'BRIEN AND DRAGO ROBERT SLISKOVIC  
Senior Party,  
(U.S. Patent No. 5,756,545).

Patent Interference No. 105,010 (MPT)

Before: TORCZON, TIERNEY and NAGUMO, Administrative Patent Judges.  
TIERNEY, Administrative Patent Judge.

**FINAL JUDGMENT**

A conference call was held on April 9, 2003 at approximately 2:00 p.m. (EST) involving:

1. Michael P. Tierney, Administrative Patent Judge
2. Dr. Eric Baude, counsel for O'Brien.
3. Stephen Maebius and George Quillin, counsel for Watanabe.

During the conference call, counsel for O'Brien requested adverse judgment as to Counts D and E, the counts in interference, as well as all claims corresponding to Counts D and E. As O'Brien has requested adverse judgment, judgment on priority is entered against O'Brien. 37 C.F.R. §1.662. Additionally, both parties agreed that this decision on priority rendered moot Watanabe Preliminary Motion 6, which requested an earlier accorded benefit date.

Upon consideration of the record, it is:

**ORDERED** that judgment on priority as to Counts D and E (Decision on Expedited Motions, Paper No. 46), the sole counts in the interference, is awarded *against* O'Brien.

**FURTHER ORDERED** that O'Brien is not entitled to a patent containing claims 1-13 of O'Brien U.S. Patent 5,756,545 as these claims correspond to Count D

**FURTHER ORDERED** that O'Brien is not entitled to a patent containing claims 14-18 of O'Brien U.S. Patent 5,756,545 as these claims correspond to Count E.

**FURTHER ORDERED** that a copy of this final decision shall be placed and given a paper number in the file of O'Brien U.S. Patent 5,756,545 and Watanabe, U.S. Application 09/120,383.

**FURTHER ORDERED** that if there is a settlement agreement, attention is directed to

35 U.S.C. § 135(c) and 37 C.F.R § 1.661.

RICHARD TORCZON  
Administrative Patent Judge

MICHAEL P. TIERNEY  
Administrative Patent Judge

MARK NAGUMO  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

cc (via Facsimile):

Counsel for WATANABE:

Stephen B. Maebius  
FOLEY & LARDNER  
3000 K Street, N.W., Suite 500  
Washington D.C. 20007-5109

Tel: (202) 672-5569  
Fax: (202) 672-5399  
email: smaebius@foleylaw.com

Counsel for O'BRIEN:

Eric Baude  
PFIZER, INC.  
2800 Plymouth Road  
Ann Arbor, MI 48105

Tel: (734) 622-2095  
Fax: (734) 622-1553  
email: eric.baude@pfizer.com